



**Federal Communications Commission
Washington, D.C. 20554**

**DA 03-1705
Released: May 15, 2003**

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Commonwealth Public Broadcasting Corp.
23 Sesame Street
Richmond, VA 23235

Re: WCVE-TV, Richmond, VA
Facility ID: 9987
NAL/Acct. No.
FRN-0006692347

Dear Licensee:

This letter constitutes a NOTICE OF APPARENT LIABILITY FOR A FORFEITURE against Commonwealth Public Broadcasting Corp. ("Commonwealth"), licensee of the above-captioned station, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"), under authority delegated to the Chief, Media Bureau, by Section 0.283 of the Commission's Rules, 47 C.F.R. §0.283. As set forth herein, we find and Commonwealth admits that it engaged in unauthorized construction and operation of WCVE-TV in violation of Section 73.1745 of the Commission's Rules.

On March 10, 2003, Commonwealth filed an application (BPET-20030310ARF) to modify the facilities of WCVE-TV to specify a new antenna site. On March 31, 2003, you filed a request (BSTA-20030331AUQ) for special temporary authority (STA) to operate with the proposed facilities pending final processing of the modification application. However, in that request, you disclosed that Commonwealth actually constructed and commenced operations with the new facilities in November of 2002, without prior authority from the Commission and more than 90 days before the modification application was even filed.

On April 15, 2003, Commonwealth's STA request was denied. In addition, you were advised that the construction at and continued operation from the antenna site proposed in the modification application was unauthorized.

Discussion. Section 73.1745 of the Commission's Rules states that no broadcast station shall operate at times, or with modes or power, other than those specified and made part of the license. Moreover, Section 73.1635 provides that special temporary authority (STA) must be sought to permit the operation of a broadcast facility for a limited period at variance from its authorization, and that authority must be received prior to the commencement of such operation.

In this case, Commonwealth filed its STA application requesting authority for WCVE-TV to operate at variance with its authorization and in accord with its proposed modified facilities *after* it constructed and commenced operation with those facilities. In view of the

above, it appears that from at least November 2002, and continuing until at least the April 15, 2003, denial of its STA request, Commonwealth willfully and repeatedly violated Section 73.1745 of the Commission's Rules by constructing and operating WCVE-TV at variance from its authorized facilities without prior Commission approval.¹ We believe that Commonwealth should be sanctioned for its violation of the Commission's Rules, and that a monetary forfeiture should be imposed for the apparent violation.

In determining the appropriate forfeiture amount, we note that in *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (Forfeiture Policy Statement), the Commission adopted guidelines for assessing forfeitures. These guidelines provide for a forfeiture of \$10,000 as the base amount for the construction and/or operation of a broadcast station without an instrument of authorization. In this case, we believe that this amount is appropriate given the circumstances in which the violation arose, as discussed above.

Based on our review of the facts and circumstances as set forth above, IT IS HEREBY ORDERED, That pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.283, and 1.80 of the Commission's Rules, Commonwealth Public Broadcasting is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the total amount of ten thousand dollars (\$10,000) for willfully and repeatedly violating Section 73.17415 of the Commission's Rules.

IT IS FURTHER ORDERED, That pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this Notice, Commonwealth Public Broadcasting SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, and addressed to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, and P.O. Box 73482, Chicago, Illinois, 60673-7482. The payment MUST INCLUDE the FCC Registration Number (FRN) referenced above

¹ Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80(a) of the Commission's Rules each state that any person who willfully or repeatedly fails to comply with the provisions of the Communications Act or the Commission's rules shall be liable for a forfeiture penalty. Commonwealth's conduct in this regard was both "willful" and "repeated" within the meaning of Section 503(b)(1)(B) of the Communications Act and Section 1.80(a)(2) of the Commission's Rules. As the Commission has held, an act or omission is "willful" if it is a conscious and deliberate act or omission, whether or not there is any intent to violate the rule. *See Southern California Broadcasting Company*, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3453 (1992). Further, a continuing violation is "repeated" if it lasts more than one day. *Id.* at 4388.

and also must note the NAL/Acct. No. referenced above. Other relevant provisions of Section 1.80(f)(3) of the Commission's Rules are summarized in the attachment to this Notice.

MISSION

A handwritten signature in dark ink, appearing to read "W. Kenneth Ferree", with a long horizontal flourish extending to the right.

W. Kenneth Ferree
Chief, Media Bureau

Enclosure

cc: Richard J. Bodorff, Esquire